

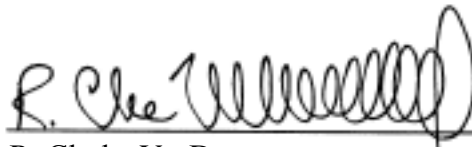
Rule 41(a)(2) of the Federal Rules of Civil Procedure provides that “[e]xcept as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff’s request only by court order, on terms that the court considers proper.” The purpose of the Rule respecting voluntary dismissal “is freely to allow voluntary dismissals unless the parties will be unfairly prejudiced.” Davis v. USX Corp., 819 F.2d 1270, 1273 (4th Cir. 1987). “A plaintiff’s motion under Rule 41(a)(2) should not be denied absent

substantial prejudice to the defendant.” Andes v. Versant Corp., 788 F.2d 1033, 1036 (4th Cir. 1986). It is well established that prejudice to the defendant does not result from the prospect of a second lawsuit. See Vosburgh v. Indemnity Ins. Co. of North America, 217 F.R.D. 384, 386 (S.D. W.Va. Sept. 12, 2003). In considering a Motion under Rule 41(a)(2), the District Court should consider the following relevant, but non-dispositive, factors: “(1) the opposing party’s effort and expense in preparing for trial; (2) excessive delay or lack of diligence on the part of the movant; (3) insufficient explanation of the need for a dismissal; and (4) the present stage of the litigation, i.e., whether a motion for summary judgment is pending.” Id.

Defendant has filed neither an Answer to Plaintiff’s Complaint, nor otherwise pled. Accordingly, it is hereby **ORDERED** that Plaintiff’s Motion to Dismiss (Document No. 6.) be viewed under Federal Rule of Civil Procedure 41(a)(1)(A) and that this matter be dismissed under Rule 41(a)(1)(A)(I) without prejudice. The Clerk is directed to remove this action from the docket of the Court.

The Clerk is directed to file this Memorandum Opinion and Judgment Order and mail a certified copy of the same to counsel of record.

ENTER: April 26, 2011.



R. Clarke VanDervort
United States Magistrate Judge